UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

ORACLE USA, INC. et al., Plaintiffs, vs. RIMINI STREET, INC. et al., Defendants. And related cases and parties	CASE No. 2:10-CV-0106-LRH-PAL Las Vegas, Nevada June 1, 2010 10:26:46 a.m.

SCHEDULING CONFERENCE

THE HONORABLE PEGGY A. LEEN PRESIDING
MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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LAS VEGAS, NEVADA TUESDAY, JUNE 1, 2010

PROCEEDINGS BEGAN AT 10:26:46 A.M.

THE CLERK: All rise.

THE COURT: Good morning. Please be seated.

THE CLERK: Your Honor, we are now calling the scheduling conference in the matter of Oracle USA, Inc., et al. versus Rimini Street, Inc., et al. The case number is 2:10-CV-0106-LRH-PAL.

Beginning with plaintiffs' counsel, counsel would you please state your names for the recorded record.

MR. POCKER: Yes, Your Honor. Richard Pocker of Boies Schiller & Flexner on behalf of the plaintiffs. And with me are my colleague from our Oakland office, Fred Norton; and in-house counsel from the client, Jim Maroulis and Tom Hixson.

MR. BURESH: Your Honor, on behalf of Rimini Street, Eric Buresh from Shook, Hardy & Bacon, Kansas City office. With me is Rob Reckers from Shook, Hardy & Bacon's Houston office, and I'll let Mr. Tratos introduce himself.

MR. TRATOS: Mark Tratos, Greenberg Traurig, here for Rimini Street as well, Your Honor.

THE COURT: All right, counsel, I set this for hearing upon receiving your discovery plan and scheduling order which requests special scheduling review and substantially longer than deemed reasonable by our local

rules, but not every case fits within our local rules so let me hear from you. I continued this hearing at your request. Let me hear from you what progress you've made and what it is that you intend to do with more specificity within the discovery in this matter, and I'll hear first from counsel for plaintiff.

Who'll be addressing the plaintiff's position?

MR. POCKER: Fred Norton will be doing that. Thank you, Your Honor.

MR. NORTON: Should I take the lectern?

THE COURT: Wherever you're more comfortable is fine with me.

MR. NORTON: Okay. Thank you. I may do a little better.

THE COURT: It's even adjustable if you want to --

MR. NORTON: Thank you.

THE COURT: -- move it up or down.

MR. NORTON: In terms of where we are, I don't think there's been much change since we filed the Rule 26 statement. And we've actually agreed on a fair amount. That is, we've agreed on, for starters that this is a complex case and that there will be a need for substantial fact and expert discovery. And we've agreed on certain categories of discovery, that there'll be unlimited requests for production of documents and that there will be a hundred RFAs for each

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side. So on those areas we've reached agreement.

Where we remain in disagreement, there are three areas essentially, and that is the number of depositions or number of hours of deposition, the number of interrogatories, and then how long it will take to actually do this discovery. And with respect to those three things the -- I think the proposals are set out and pretty clearly by the parties in the Rule 26 statement, but to sum up quickly:

On depositions Oracle propose 75; the plaintiff's propose 50.

On depositions we propose 200 hours, they propose 165, although they compartmentalize them in ways that we don't think are efficient or will serve the interest of the parties and actually getting discovery.

And then in terms of the time for discovery, we propose 15 months for fact discovery and six for expert, and they propose 12 and three.

Now in the papers they suggest that, although they concede, they agree that it's a complex case and we need a lot of discovery, that what Oracle has proposed is more than is necessary. I think the -- what we have proposed is more appropriate and I would point out that we took some trouble in the Rule 26 statement to layout why we think it's more appropriate to go with the slightly greater discovery that we propose.

The defendants haven't actually explained why they think that's not the right amount. They just say what they propose is enough and --

THE COURT: Usually it's the plaintiff that wants to push faster and go to trial earlier and get things done sooner and --

MR. NORTON: That is true.

THE COURT: -- the defendants always tell me they need more time. So this time you are asking for more time.

MR. NORTON: We are. And I think that we have the benefit in this case, as we explained in the Rule 26 statement, of the experience of having litigated a very similar case. We are litigating a very similar case in the Northern District of California against SAP and against the predecessor company of one of the defendants here, Mr. Raven, previously was a manager of Tomorrow Now, is one of the defendants in the San Francisco lawsuit. So it's a clear relationship between the two cases and the same claims and types of claims, same types of conduct. And the benefit of that experience is that it will take a lot of time to do what we need to do and the amount of discovery that we're proposing, and I'll get into the specifics that you asked for about what we intend to do with that time, but we need that in order to do this right.

I can't tell you it would be impossible to do what

plaintiffs say but based on our experience in the SAP case, where it took twice as much time, twice as many hours of deposition, twice as many interrogatories, almost, to do what Oracle proposes here, I can't tell you that it's realistic to think that we will get done in the time that -- that the defendants propose or that we can do it without cutting corners and that's really the concern.

It's the type of information that we're going to be seeking in this case is not emails and PowerPoints. And we will be seeking those obviously, but that's not the crux of the case at the end of the day. We're going to have to get server logs, software, technical documents that attorneys can't just sit down and read. It will require consulting experts and testifying experts to help us understand after we have identified them, loaded them up in a format that people can use, and done the analysis that we have to do.

THE COURT: And where are you in terms of initiating the discovery that's necessary in order for you to get the stuff that you can turn over to your consultants and experts?

MR. NORTON: Both sides have served initial request for documents. Oracle has served 14 interrogatories and those interrogatories are what we characterize as foundational. They're not contention interrogatories, they're not directed at the substance at this stage. Rather

we want to know what are your computer systems? How are your computer systems configure? And what are the processes that you use to deliver software and support materials to your own customers?

We need to understand that framework before we can begin to intelligently begin to direct our discovery at the substance. And so the parties agreed we would have some tailored discovery at the outset, focused to helping us understand the task at hand, and then we would proceed to more detailed discovery.

So we've exchanged those requests, document requests exclusively from the defendants and document requests and a small number of interrogatories from the plaintiffs, but no one has responded yet. And so we expect that document productions will begin in the course of the summer. We would like to begin depositions as we can, but at this point, other than Rule 26 disclosures, neither party has produced any information to the other side.

THE COURT: And when are the responses due?

MR. NORTON: The -- I believe the responses for the first set of interrogatories are due either today or tomorrow. I apologize, but either today or tomorrow. And then the first responses to documents would start to come out in about two weeks. And again, both sides agreed to serve narrower document requests that would help us understand what

comes and then more burdensome, for want of a better word, document request that we would understand would take longer to collect and produce. So the defendant's have served 88 document requests as of -- yeah, eight of which are, their narrow initial round and another 70 -- or 80 of which are their ones that they understand will take longer for us to respond to.

THE COURT: And how long do you anticipate the initial process of -- I'll summarize it, defining the universe of what it is that you're going to need and want to discuss with your expert will take?

MR. NORTON: Well, that, what we call foundational discovery, we are aiming to complete within two to three months that will help us understand what are the next steps? What are the types of documents, types of programs that their developers use? What are the types of -- the ways in which they store information? That will allow our experts to come back and say, here's what you need to be asking for, here's where you're going to see the evidence that will really make a difference. But that will take us through a round of 30(b)(6) depositions, those initial interrogatory responses, and probably some discussions between counsel.

So we'll have to get through that and then that tees us up for the hard work, saying okay, now we know what we need and we have to get some -- we'll ask for it, and

there'll be some back and forth. It's too complex for us to get it right the first time.

So there'll be some iterations there and then at some point we'll have identified what we need and they'll have to pull it off their systems. And again, it's not going to be a document pull, like going to the email server, so that will take more time. And then once we get that, it's our experience in the Oracle versus SAP case is it's an enormous task to get that information, terabytes of information, load it onto our own system, begin to understand it, organize it, analyze it, figure out what you don't have and come back.

THE COURT: Have you reach the stage of being able to discuss the format in which the materials will be produced?

MR. NORTON: Format of the materials -- the conventional materials such as PowerPoints and emails? Absolutely, and we have agreement on that.

The technical documents? No. We haven't reached the point where we can discuss the format because we haven't crossed that first hurdle of understanding what it is that needs to be produced. And we -- so we think some staging is inevitable here, perhaps not inevitable but prudent, cause without it what we would have to do is ask for everything and then sort it out. We'd rather not go down that road. We'd

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rather focus it and proceed in increments.

But by doing that, that slows down the process at the front end, but we think saves a lot of time and a lot of resources at the back end. If we just open the doors then we'll spend a lot of time figuring out what it is we're doing. We don't think it makes sense to do that.

THE COURT: So you'd rather sequence the discovery is what I'm hearing you -- from doing the foundational information first, narrowing the universe, getting the materials that are needed in order to decide substantively what you need to do?

MR. NORTON: That's correct. We avoided a more -- a formal sequencing because we think that it's better to --

THE COURT: There should be some flexibility built in.

MR. NORTON: I beg your pardon?

THE COURT: There should be some flexibility built in.

MR. NORTON: Absolutely, yes. And to the extent that we can quickly get up to speed and identify categories of information that we know we want, they know they can produce. There's no reason to say, no, that waits until six months in. So we don't want something more formal, but we do think it's going to take several stages. And if we didn't articulate it that way, it would probably happen that way.

It would just happen in a less efficient way because we would still go through this iterative process.

In terms of what we need, again we've asked for this foundational discovery and that would help quite a bit, but it'll take a little bit of time to get what we need and analyze it and then take the next step.

In terms of what it is that we want, well, in this particular case we have -- it's a copyright case, it's also a case involving claims of computer fraud and abuse, and it involves claims that the defendants interfered with Oracle's relationship with its customers. There are other common law claims that are similar to those, but those three categories broadly capture what the case is about.

So with respect to the copyright issues, well, we have software code that Oracle owns and that the defendant's copied a created derivative works on [sic]. So we will need to obtain their derivative works and experts will have to analyze them and compare them to Oracle's copyrighted work. They're having -- once they do that, there may be issues of disputes about copyright ability. We don't expect, excuse me, those to be substantial issues but defendants may raise them.

May I get some water?

THE COURT: Of course.

(Pause in the proceedings)

THE COURT: You're in the desert. I don't normally make people that nervous the first appearance.

MR. NORTON: I apologize. Thank you.

So that would be a substantial undertaking in terms of the technical information. Again, we're not talking about a song and we're not talking about a small number of copyrighted works. There are approximately 100 registered works at issue that we allege and they claim in their counterclaim. They have downloaded tens of thousands of files on behalf of just one customer. So the volume of information, just as with a copyright claim, will be enormous.

On the computer fraud and abuse claim the scale is similar and the complexity is equal. What involves there is that they are using individuals and software programs to go on Oracle's website, a password protected website, and get on that website and download tens of thousands of documents that they're not entitled to have. And so what did they download, when did they download it or whom were they purporting to act when they downloaded it? Those are very painful, unfortunately, and fact intensive inquiries we have to go through and it requires that we assimilate a large amount of information and then go through it in a very painstaking way.

Then the third -- or broad category of discovery

that has to be pursued here then is the consequences of that. I mean there are very direct consequences in terms of the effects of this activity on Oracle's computer systems and the very obvious effect of information having been stolen. But beyond that, there's an effect on Oracle's customers having been taken from Oracle and having gone to Rimini Street and those have to be identified who those customers are and what the financial consequences were and what the financial benefit was to the defendants. So that's a third category of discovery that will require -- I don't think the same level of complexity of the first two, but it's certainly a third area that's not insubstantial.

And it -- I should add that in this case there's a counterclaim and so long as the counterclaim remains in the case it does -- they have a defamation claim, and unlike their other two claims, which I think are essentially mirror images of our claims, their defamation claim will require still other categories of discovery. Whatever their reputation may be and whoever holds that reputation will be an area for discovery on their defamation claim to the extent that remains part of this case. So that is yet another area of discovery.

So those are the four broad areas and we'll be seeking not just again the typical documents but the developers' documents that show how they actually create

software, the files they create as they go along so we can see what that process is, the special tools that they use in order to do that. We'll be seeking most likely deleted files, their files that were created along the way and not retained in the normal course, but they may still exist on the systems, and those will be important evidence of copying and important evidence of derivative works and we'll be pursuing that as well. And that will create challenges in the course of discovery that you don't see in every case.

So without going through every reason why we think this is a case where slightly more discovery than defendants propose is appropriate, I think that those reasons alone are sufficient. I'm happy to go through some of the others, our experience in SAP, the nature of the claims here, our experience with Mr. Raven. But I think that that's set out in some detail in our papers.

THE COURT: Okay.

MR. NORTON: I would just -- before I sit down, well, if the Court has questions obviously --

THE COURT: I've been asking as we've gone along, so.

MR. NORTON: To the extent that -- both sides are trying to get it right in terms of how much time we need and how much efforts going to be -- on time, if -- once the Court imposes limits on the amount of discovery then there's no

burden or prejudice to either side of taking a little more time. And given our experience in dealing with these kinds of issues in the other case, a little more time makes a big difference. And it's important to Oracle that we take the time, that we do the analysis, and we get it right.

And our fear is that if we compress things, even a little bit, where you compress it you cut corners. And we think the plaintiffs proposal is one that cuts corners. We don't want to do that. The danger -- further danger is that we just end up coming back in 10 months and saying we couldn't get it done, now we need three more months, four more months. Which is our experience unfortunately in the SAP case.

THE COURT: That's my experience, no matter what amount of time the parties ask me, you always come back and ask for more.

MR. NORTON: I understand. So we'd like to avoid that if we can, but we understand that we're all trying to make a prediction here. But we do have the benefit of experience and that -- the experience is that the proposal we have is a reasonable one, we think it's a doable one, but we don't think that true of the defendants' proposal.

THE COURT: All right.

MR. NORTON: Thank you.

THE COURT: Thank you, sir.

And who will be addressing the defendants' position?

MR. BURESH: Eric Buresh, Your Honor.

Well, thank you for having us in this morning. I know this is taking up your time and the parties time as well so I'll be brief. I think these issues aren't that complex. It really is a judgment call on the part of the Court as to what discovery period and discovery allotment you want to set, so let me throw out my perspective.

There was a lot of talk from Mr. Norton about his experiences and in my experience in these cases it -- discovery is much like, for lack of a better analogy, my household budget. It expands to fit whatever resources are available. And that's what we're trying to take care of at this early stage is, no matter how difficult or complex the case is, and I think Mr. Norton is right, that both parties agree this is not the standard case. Obviously we've prevented -- presented schedules that, you know, go beyond the local rules and the federal rule allotment for both time frame and discovery.

But the question is, how can you maximize efficiency? And from our view you maximize efficiency by putting a schedule in place that makes the parties go about their business in a diligent fashion. And that's the schedule we proposed: 12 months for fact discovery, three months for expert discovery after that for a total of 15

months.

Now, Mr. Norton talked a lot about the SAP case which is another case, related facts, but a different case. Different lawyers, different parties, different facts in the case. It's just a different case all together. And as you alluded to earlier on, the sides here are somewhat flipped. We're asking for a faster schedule while the plaintiffs are asking for a slower schedule, if you will.

Why is that? One of the key differences between the parties and the SAP Oracle case and this case is simply the size and resources of the parties. In the SAP case you have Oracle versus SAP, which they're both gigantic companies. I mean a hundred thousand employees for Oracle. And you see the results of that. You have a discovery period that lasts 28 months, six months on top of that for expert discovery, nearly a thousand hours of depositions. Just hours, not -- 1285 requests for admission, 127 interrogatories. I mean it got out of control and that's what happens when you have massive parties with unfettered resources.

Rimini Street has about 160 employees. It's a relatively young company. It's getting started. It happens to be a consulting company that stands in the shoes of this clients to service Oracle software and Oracle databases. We happen to be a consulting company that exists in a field

that's very, very profitable for Oracle and so the lawsuit is -- it follows from that. When you -- when you go into a -- into a area where great profits are at risk, there's going to be a lot of resources on the litigation frame as well. We need to control that. It cannot be another SAP case. If it is, Rimini Street will be out of business cause we can't sustain that, it's a small company.

So taking into -- taking into the equation the size of the companies, the complexity of the case, we weren't being unreasonable. We're not trying to pinch Oracle. We simply say, look, federal rule provides some guidelines, the local rules provide some guidelines. Work off of those.

If you look at our proposals, we've doubled the interrogatories that were in the defaults, 25 to 50. We've doubled -- more than doubled the standard deposition time. Now in the federal rules you get 10 depositions, seven hours a piece, 70 hours. Our recommendation is 165 hours for depositions, but we have broken that up a little bit because if you -- if you look at Oracle's proposal, 200 unfettered hours. I'm not going to stand here and say that I think Mr. Norton wants to abuse 200 hours of deposition time. But I will stand here and say that it's possible that a party could abuse that number of unfettered hours. There is a reason why the federal rules --

THE COURT: They're wanting to avoid shortcuts, you

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suspect, and so trying to bankrupt your client through discovery.

MR. BURESH: I'm trying to protect my client. To make a long story short, we don't have the resources to go and defend hundreds of depositions that are two hours a piece. We don't have the capability to spread ourself --

THE COURT: Well, neither side is proposing that.

MR. BURESH: What's that?

THE COURT: They're not proposing that.

MR. BURESH: Well, I agree. And again, I would not -- I would not say that they are proposing that. My point simply is the parade of horribles, if you look at 200 hours, that could happen. Not that it will, but it could. That's why I think the federal rules go to the deposition -- they give you a number and they give you an hour limit on the number, but you have 10 individual depositions. It has to be the starting point, not just hours but how many depositions do you have. If we have 160 employees at 200 hours available, every single one of them could be deposed.

What we're saying is work from the federal rules. It gives you 10 individual depositions. We've increased that to 15. In addition, 15 hours for 30(b)(6) testimony. In other words, corporate testimony, 15 additional hours. In addition to that, 40 hours of third-party testimony. That provides Oracle plenty of time, plenty of depositions to

gather the facts that they need to gather and yet it provides, by structuring it that way, protections against abuse. That's the basis for that proposal.

With respect to the schedule, 12 months for fact discovery. If we're using our time effectively, if we're proceeding diligently, that's a doable time frame. A full year for fact discovery. Three months on top of that for expert discovery.

Again, I am quite confident that whatever time the Court gives for discovery it will be consumed. We want to make sure that we don't -- the starting point for that consumption is a controllable amount and we believe that 12 months plus three months accomplishes that as well.

So that's our positions. If you have any questions, I'd be happy to answer them.

THE COURT: Do you concur that there is a need for some foundational discovery that'll take approximately two to three months in order to really figure out what the universe is of things that you will need to exchange and the format of those exchanges?

MR. BURESH: I don't think -- to say it's necessary? No, that's part of discovery. That's part of discovery in every --

THE COURT: Is it more efficient?

MR. BURESH: -- in every one of these cases.

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It is more efficient to do that way and we have informally agreed to do that. Both sides have exchanged this preliminary discovery already. Both sides -- or at least my side, Rimini Street, has agreed to make production on that initial request as much as possible and I believe it'll be a fulsome production within 45 days of the issuance of the request. So it's not going to be a rolling production after that. There may be a little bit that's rolling, but predominantly we will complete that initial production within 45 days and I think that's evidence of the fact that we want to move this along. We want the discovery to move quickly. We want to be done with it.

My clients want to get this to the merits as soon as possible so that there's a clear playing field. We know what the rules are, we know what the legal framework is, and we can go forward as a business. And that's the interest of my client and the quicker we can do that, the better we are.

So we're ready to proceed with discovery. We're proceeding in good faith now, and I believe that as the parties continue to operate in that manner, 12 months for fact discovery is more than enough.

THE COURT: Thank you, counsel.

MR. BURESH: Thank you.

THE COURT: Well, I appreciate the civility and collegiality with which you have presented your respective

positions in this matter.

It is my desire to give you a reasonable schedule and one that does not unreasonably compress the amount of time that you have to do what you need to do and to see that discovery is accomplished in a cost-effective manner as well and I have a strong preference for applying Rule 1 to see if I can accomplish the just, speedy, and inexpensive resolution of every matter to the extent that's humanly possible in Federal Court.

What I want to do is continue this for a status conference in 60 days. By then you will have made your initial disclosures. You will have had the foundational discovery well underway. You should have a better idea of what your issues and concerns are, and I'll enter a plan at the end of the 60 days to give you an outline and monitor what it is that you each want to do to ensure that we don't have any discovery abuses on either side. And I'm not suggesting that either side has that intention. But rather than set what is effectively -- a somewhat arbitrary date without knowing what your problems are and what your universe is of materials that you will exchange, I'll set the deadlines as we go and give you leave to conduct additional discovery as we go instead of across the board.

And I will also be happy -- I do this in cases including MDL cases and routine discovery disputes, to hold

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periodic status and dispute resolution conferences to enable you to submit your disputes on joint status reports rather than through the necessity of formal briefing, unless there is something, of course without prejudice to formal briefing, if that's the way you feel is necessary. But many of these disputes are routine and judgment calls and there's no reason why we have to engage in formal motion practice if they can be resolved as we go along. So I intend to keep you moving forward and to adjust and to set deadlines as we go, rather than pull numbers out of our hat, which is kind of what we're doing right here at this stage, given that you haven't conducted the foundational discovery here.

So if that gives you enough guidance, I hope it does. If it doesn't, let me know, but I'll give you a status check in 60 days and require you to submit a joint status report that tells me what you've done, identifies whether you have any disputes or issues, and what your preliminary discovery suggests in terms of your proposals for completion of discovery and experts.

Okay. Any questions or need for clarification on either side? Okay.

And if you would prefer to appear telephonically because it's more cost efficient for your clients, I'm more than happy to do that. Some folks like that and some people prefer to appear in person, so I'm more than happy to

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entertain these on a telephonic basis to save you the time and expense of coming here from out of state.

Okay. Mr. Miller, if we can give a 60-day status check and then a date for the providing a joint status report? And I would ask you please to avoid springing surprises on your adversaries about what you want included in the status reports so that we don't have a dispute about what goes in it and what doesn't. I expect where you are, what you've done, what you need to do, whether you have any disputes. If so, your respective positions with respect to those disputes and alerting the Court to any impediments that there are to moving this case forward is what I'm asking you for in a joint status report.

All right. Mr. Miller.

THE CLERK: Yes, Your Honor. This matter will be set for status check on Thursday, August the 5th, 2010, at 9:30 a.m. in this courtroom. We request the status report to be filed no later than Monday, August 2nd, 2010.

THE COURT: Okay. Thank you for appearing here today, counsel. And again, I do appreciate the civility that you've shown to one another and to the Court.

PROCEEDINGS CONCLUDED AT 10:55:24 A.M.

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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